



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2016-0322; FRL- 9950-95-Region 9]

**Approval and Limited Approval and Limited Disapproval of California State
Implementation Plan Revisions; Butte County Air Quality Management District;
Stationary Source Permits**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a limited approval and limited disapproval of revisions to the Butte County Air Quality Management District (BCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern the District's New Source Review (NSR) permitting program for new and modified sources of air pollution. We are proposing action on these local rules under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by **[Insert date 30 days after publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. [EPA-R09-OAR-2016-0332] at <http://www.regulations.gov>, or via email to R9AirPermits@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from Regulations.gov. For either manner of

submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “FOR FURTHER INFORMATION CONTACT” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region IX, (415) 972-3534, yannayon.laura@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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DEFINITIONS

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The word or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The initials *CARB* mean or refer to the California Air Resources Board.
- (iii) The initials *CFR* mean or refer to Code of Federal Regulations.
- (iv) The initials or words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.
- (v) The initials *FR* mean or refer to Federal Register.
- (vi) The word or initials *BCAQMD* or *District* mean or refer to the Butte County Air Quality Management District.
- (vii) The initials *NAAQS* mean or refer to National Ambient Air Quality Standards.
- (viii) The initials *NSR* mean or refer to New Source Review.
- (ix) The initials *PM₁₀* mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers (coarse particulate matter).
- (x) The initials *PM_{2.5}* mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 2.5 micrometers (fine particulate matter).

- (xi) The initials *SIP* mean or refer to State Implementation Plan.
- (xii) The initials *TSD* mean or refer to the technical support document for this action.

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal, including the dates they were adopted by BCAQMD and submitted by CARB, which is the governor's designee for California SIP submittals.

Table 1 - Submitted Rules

Rule #	Rule Title	Adopted Date	Submitted Date
400	Permit Requirements	04/24/14	11/06/14
401	Permit Exemptions	04/24/14	11/06/14
432	Federal New Source Review	04/24/14	11/06/14

On December 18, 2014, EPA determined that the submittal of these rules met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

There is no previous version of Rule 432 in the SIP; EPA approved previous versions of the rules to be replaced by Rules 400 and 401 into the SIP as indicated in Table 2.

Table 2 – SIP Approved Rules

Rule #	Rule Title	SIP Approval Date	Federal Register Citation
4-4	Exemptions from Permit Requirement	05/31/72	37 FR 10856
401	General Requirements	02/03/87	52 FR 3226
402	Authority to Construct	02/03/87	52 FR 3226

Rule #	Rule Title	SIP Approval Date	Federal Register Citation
403	Permit to Operate	5/2/01	66 FR 21875
405	Permit Conditions	05/31/72	37 FR 10856
406	Emission Calculations	02/03/87	52 FR 3226
407	Anniversary Date	02/03/87	52 FR 3226
420	Standards for Granting Applications	02/03/87	52 FR 3226
421	Conditional Approval	02/03/87	52 FR 3226
424	State Implementation Plan	5/2/01	66 FR 21875

EPA's approval of Rule 401 would have the effect of entirely superseding our prior approval of Rule 4-4 in the SIP. Likewise, approval of Rules 400 and 432 will have the effect of entirely superseding our prior SIP approval of Rules 401, 402, 403, 405, 406, 407, 420, 421 and 424.

C. What is the purpose of the submitted rules?

Section 110(a) of the CAA requires states to submit regulations that include a preconstruction permit program for certain new or modified stationary sources of pollutants, including a permit program as required by Part D of Title I of the CAA.

The purpose of District Rule 400 (Permit Requirements), Rule 401 (Permit Exemptions) and Rule 432 (Federal New Source Review) is to implement a federal preconstruction permit program for all new and modified minor sources, and new and modified major sources of NAAQS pollutants for which the area is designated nonattainment. BCAQMD is currently designated as a nonattainment area for the 2008 8-hr ozone and 2006 24-hr PM_{2.5} NAAQS. We present our evaluation under the CAA and EPA's regulations of the amended NSR rules submitted by CARB, as identified in Table 1, and provide our reasoning in general terms below and in more detail in our TSD, which is available in the docket for this proposed rulemaking.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

The submitted rules must meet the CAA's general requirements for SIPs and SIP revisions in CAA sections 110(a)(2), 110(l), and 193, as well as the applicable requirements contained in part D of title I of the Act (sections 172, 173, 182(a) and 189(e)) for a nonattainment NSR permit program. In addition, the submitted rules must contain the applicable regulatory provisions required by 40 CFR 51.160-51.165 and 40 CFR 51.307.

Among other things, section 110 of the Act requires that SIP rules be enforceable and provides that EPA may not approve a SIP revision if it would interfere with any applicable requirements concerning attainment and reasonable further progress or any other requirement of the CAA. In addition, section 110(a)(2) and section 110(l) of the Act require that each SIP or revision to a SIP submitted by a State must be adopted after reasonable notice and public hearing.

Section 110(a)(2)(C) of the Act requires each SIP to include a permit program to regulate the modification and construction of any stationary source within the areas covered by the SIP as necessary to assure attainment and maintenance of the NAAQS. EPA's regulations at 40 CFR 51.160-51.164 provide general programmatic requirements to implement this statutory mandate commonly referred to as the "minor NSR" or "general NSR" permit program. These NSR program regulations impose requirements for SIP approval of State and local programs that are more general in nature as compared to the specific statutory and regulatory requirements for nonattainment NSR permitting programs under Part D of title I of the Act.

Part D of title I of the Act contains the general requirements for areas designated

nonattainment for a NAAQS (section 172), including preconstruction permit requirements for new major sources and major modifications proposing to construct in nonattainment areas (section 173). Part D of title I of the Act also includes section 182(a), which contains the additional requirements for areas designated as a marginal ozone nonattainment area, and section 189(e), which requires the control of major stationary source of PM₁₀ precursors (and hence PM_{2.5} precursors) “except where the Administrator determines that such sources do not contribute significantly to PM₁₀ [and PM_{2.5}] levels which exceed the standard in the area.” Additionally, 40 CFR 51.165 sets forth EPA’s regulatory requirements for SIP-approval of a nonattainment NSR permit program and 40 CFR 51.165(a)(13) contains specific requirements for regulating sources emitting PM_{2.5}.

The protection of visibility requirements that apply to NSR programs are contained in 40 CFR 51.307. This provision requires that certain actions be taken in consultation with the local Federal Land Manager if a new major source or major modification may have an impact on visibility in any mandatory Class I Federal Area.

Section 110(l) of the Act prohibits EPA from approving any SIP revisions that would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the CAA. Section 193 of the Act, which only applies in nonattainment areas, prohibits the modification of a SIP-approved control requirement in effect before November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.

Our TSD, which can be found in the docket for this rule, contains a more detailed discussion of the approval criteria.

B. Do the rules meet the evaluation criteria?

EPA has reviewed the submitted rules in accordance with the rule evaluation criteria described above. With respect to procedures, based on our review of the public process documentation included in the November 6, 2014 submittal, we are proposing to approve the submitted rules in part because we have determined that BCAQMD has provided sufficient evidence of public notice and opportunity for comment and public hearings prior to adoption and submittal of these rules, in accordance with the requirements of CAA sections 110(a)(2) and 110(l).

With respect to substantive requirements, we have reviewed the submitted rules in accordance with the evaluation criteria discussed above. We are proposing to approve Rules 400 and 401 as part of BCAQMD's general NSR permitting program because we have determined that these rules satisfy the substantive statutory and regulatory requirements for a general NSR permit program as contained in CAA section 110(a)(2)(C) and 40 CFR 51.160 - 51.164.

In addition, we are proposing a limited approval of Rule 432 because we have determined that Rule 432 satisfies all of the statutory and regulatory requirements for a nonattainment NSR permit program as set forth in the applicable provisions of part D of title I of the Act (sections 172, 173 and 182(a)) and in 40 CFR 51.165 and 40 CFR 51.307.

We are also proposing a limited disapproval of Rule 432 because we have determined that the rule does not fully satisfy CAA section 189(e) requirements for regulation of PM_{2.5} precursors. The rule does not specify ammonia as a PM_{2.5} precursor and the demonstration provided by Butte County as part of their NSR program submittal is not adequate to allow the Administrator to determine whether potential new major sources and major modifications of

ammonia emissions will not contribute significantly to PM_{2.5} levels that exceed the standard in the area. Our TSD for this action contains additional information regarding our proposed limited disapproval.

EPA is also proposing to find that it is acceptable for BCAQMD to not incorporate the NSR Reform provisions of 40 CFR 51.165 into its NSR permit program because BCAQMD's permitting program will not be any less stringent than the federal permitting program. In addition, EPA is proposing to find that Rules 400, 401 and 432 meet the statutory requirements for SIP revisions as specified in sections 110(l) and 193 of the CAA.

Please see our TSD for more information regarding our evaluation of Rules 400, 401 and 432.

C. Proposed action and public comment.

As authorized by CAA section 110(k)(3) and 301(a), we are proposing approval of Rule 400 (Permit Requirements) and Rule 401 (Permit Exemptions), and we are proposing limited approval and limited disapproval of Rule 432 (Federal New Source Review) into the BCAQMD portion of the California SIP. If finalized, this action will incorporate the submitted rules into the SIP, including those provisions identified as deficient.¹ The approval of Rule 432 is limited because EPA is simultaneously proposing a limited disapproval of Rule 432 under section 110(k)(3). If this limited disapproval is finalized, it will trigger sanctions under CAA section 179 and 40 CFR 52.31 unless the EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of the final action.

¹ If this proposed rule is finalized, Butte County Rules 400, 401 and 432, will supersede the existing SIP approved rules listed in Table 2.

Note that Rule 432 has been adopted by the BCAQMD, and the EPA's final limited disapproval would not prevent the local agency from enforcing it. The limited disapproval also would not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992 EPA memo found at:
<http://www.epa.gov/nsr/ttnnsr01/gen/pdf/memo-s.pdf>.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to finalize the incorporation by reference the BCAQMD rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available electronically through www.regulations.gov and at the EPA Region IX Office (please contact the person identified in the "FOR FURTHER INFORMATION CONTACT" section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

A. *Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not

impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, New Source Review, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Dated: August 9, 2016.

Alexis Strauss,
Acting Regional Administrator,
Region IX.

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